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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

ANDRE LOVE,

Defendant and Appellant.

C045611

(Super. Ct. Nos.  
03F02329 & 03F02414)

Defendant Andre Love entered negotiated pleas of no contest to assault with a deadly weapon or by means of force likely to produce great bodily harm, a felony (case No. 03F02329), and possession of a sawed-off shotgun, a misdemeanor (case No. 03F02414). Felony charges of kidnapping, making criminal threats, and being a felon in possession of a firearm were dismissed, as were a misdemeanor charge of obstructing a peace officer in the performance of the officer's duties and a sentencing allegation that defendant had a prior serious felony conviction. Defendant stipulated he would

be sentenced to a prison term of four years for the felony assault, with a concurrent county jail term for the misdemeanor.

After denying defendant's motion to withdraw his plea, the trial court sentenced him to the agreed felony term of four years in state prison and a concurrent county jail term of 180 days.

Having obtained a certificate of probable cause, defendant appeals, challenging the trial court's denial of his motion to withdraw his plea. We shall affirm the judgment.

#### FACTUAL AND PROCEDURAL BACKGROUND

A detailed summary of the underlying facts is not necessary to resolution of the issue on appeal. It is sufficient to note that the firearm charges and the obstructing an officer charge arose out of an incident on March 2, 2003. A Sacramento County Sheriff Deputy stopped the vehicle defendant was driving with expired registration tags and learned that defendant was on parole. When the deputy said he was going to conduct a pat down search due to defendant's parole condition, defendant ran away. During a search of the vehicle, a short-barreled shotgun and nine live rounds of ammunition were found in a backpack.

The kidnapping, criminal threats, and assault charges were based on a report by defendant's ex-girlfriend, D.R., that on March 17, 2003, defendant grabbed her by her hair and forced her into the passenger seat of his car and drove off. As defendant slowed for a speed bump, D.R. hopped out of the car and ran away. Defendant stopped the car and ran after her. When he caught her, defendant said that she had "reached [her] time" and that she was "just going to have to find somebody to take care of [her] son

because it's pretty much over for [her]." D.R. ran again, but defendant caught her, slapped her in the face, and tried to get her back into the car. When he thought he saw her brother coming, defendant pulled D.R. behind some bushes, where he slapped and punched her, pulled her hair, and choked her.

At a hearing on September 29, 2003, a resolution of the two cases was proposed. When the trial court asked defendant if he wanted to enter into the plea agreement, defendant replied, "Yeah." Defense counsel said she had many opportunities to discuss the matter with defendant and believed she had explained everything to him. Counsel stated that defendant was entering his pleas pursuant to *People v. West* (1970) 3 Cal.3d 595, without admitting any wrongdoing, but for strategic reasons. The court explained defendant's constitutional rights, obtained his personal waivers of each of them, and told defendant that once he entered the pleas, he did not have the right to change his mind and withdraw them. His pleas could be withdrawn only if there was sufficient legal cause for doing so. When the court asked defendant if anyone had made any threats or promises to induce him to enter the pleas, defendant replied, "No." Defendant then pled no contest to assault by means of force likely to produce great bodily harm (Pen. Code, § 245, subd. (a)(1)) and to possession of an illegal sawed-off shotgun (Pen. Code, § 12020, subd. (a)).

Prior to sentencing, defendant wrote a letter to the court complaining that his appointed attorney had "brow-beaten" him into accepting the plea agreement. He complained that his attorney had spoken with his family, discussing things he had never disclosed

to them, in violation of the attorney/client privilege and that, as a result, defendant had no trust or faith in his attorney. He requested that his plea be rescinded.

The trial court appointed a second lawyer for the limited purpose of representing defendant with respect to a motion to withdraw his plea if appropriate. Defendant's subsequent motion to withdraw his plea claimed that he received ineffective assistance of counsel due to his trial attorney's failure "to fully investigate his matter" and that his plea was the result of duress in that his attorney had improperly communicated with defendant's family, enlisting their aid to convince him to enter the pleas despite his innocence. Defendant attached to his motion two letters that he had received, one from his mother and one from his sister. Although defendant's sister expressly recognized defendant's innocence in her letter, both letters urged defendant to accept the proposed plea agreement. Defendant claimed the letters overrode his free will in deciding whether to accept the proposed agreement.

The trial court held an evidentiary hearing on the motion. Defendant's trial attorney testified as follows: She described her investigation of the cases and stated she talked with defendant about his cases at least 10 times. She spoke to defendant's family only because defendant asked her to do so. Defendant said that he wanted his family's input on the proposed offer. Since they could not visit him in jail, he asked counsel to contact his mother for her opinion. She did so but did not divulge any private matters; defendant's prior convictions were public information. It was the

prosecutor who initiated discussion about the potential resolution of the cases. Detailed negotiations ensued. Counsel spoke with defendant a number of times about various offers for resolution of the cases, and at one point defendant gave her a counteroffer to take to the prosecutor. While these negotiations were taking place, counsel was still preparing for trial. She told defendant that ultimately it was his sole decision whether to accept the offered plea agreement. She went over the elements of the offenses with him and explained his constitutional rights and possible defenses. She made no effort to force defendant to accept the offered plea bargain. She told him that he had very triable cases.

The trial court found that there was no evidence of any breach of attorney/client relationship by defendant's trial attorney, that the attorney had contacted defendant's mother and sister at his request and for his benefit, and that there was no support for his claim of ineffective assistance of counsel; counsel had properly investigated defendant's cases and had prepared for both trial and a negotiated disposition. Hence, the court concluded defendant had failed to establish good cause to withdraw his plea.

#### DISCUSSION

Defendant claims his motion to withdraw his no-contest pleas should have been granted because he "establishe[d] that his free will and judgment were overborne by the pressure put on him by his relatives and his defense counsel." We disagree.

Penal Code section 1018 provides in pertinent part:  
"On application of the defendant . . . , the court may, . . .  
for a good cause shown, permit the plea of guilty to be

withdrawn and a plea of not guilty substituted. . . . This section shall be liberally construed to effect these objects and to promote justice.”

Good cause to withdraw a plea exists when a defendant has entered a plea as a result of mistake, ignorance, or some other factor preventing the defendant’s free exercise of judgment. (*People v. Cruz* (1974) 12 Cal.3d 562, 566; *People v. Castaneda* (1995) 37 Cal.App.4th 1612, 1617.) Other factors overcoming defendant’s free judgment could include inadvertence, fraud, or duress. (*People v. Huricks* (1995) 32 Cal.App.4th 1201, 1208 (hereafter *Huricks*).) “However, “[a] plea may not be withdrawn simply because the defendant has changed his mind.” (*Ibid.*, citing *People v. Nance* (1991) 1 Cal.App.4th 1453, 1456.)

Although section 1018 is to be liberally construed, good cause for withdrawal of a guilty plea must be shown by clear and convincing evidence. (*People v. Cruz, supra*, 12 Cal.3d at p. 566; *People v. Hightower* (1990) 224 Cal.App.3d 923, 928.) Courts are especially cautious in allowing withdrawal of guilty pleas entered as a result of negotiated pleas. (*People v. Weaver* (2004) 118 Cal.App.4th 131, 146; *People v. Urfer* (1979) 94 Cal.App.3d 887, 893, fn. 6.) “When a defendant is represented by counsel, the grant or denial of an application to withdraw a plea is purely within the discretion of the trial court after consideration of all factors necessary to bring about a just result. [Citations.] On appeal, the trial court’s decision will be upheld unless there is a clear showing of abuse of discretion. [Citations.]” (*People v. Shaw* (1998) 64 Cal.App.4th 492, 495-496.) Abuse of discretion

is found only if the trial court has exercised its discretion in an arbitrary, capricious, or patently absurd manner resulting in a manifest miscarriage of justice. (*Id.* at p. 496.)

In this case, defendant claims he "lost faith in his defense counsel and believed that she had wrongly shared confidential information with his relatives." Her communications with his family resulted in his mother and sister sending him letters that "stressed to him his lack of hope in any trial," despite his claimed innocence. Defendant asserts he "may still have entered the pleas as the result of duress and a loss of free will even if he received effective assistance of counsel when he entered the pleas."

In a contested motion to withdraw a plea, the trial court is the trier of fact responsible for judging the credibility of the witnesses or affiants. The court must resolve conflicting factual questions and draw the resulting inferences. (*People v. Caruso* (1959) 174 Cal.App.2d 624, 636.) Where two conflicting inferences may be drawn from the evidence, a reviewing court must accept the one supporting the trial court's order. (*People v. Harvey* (1984) 151 Cal.App.3d 660, 667.)

Here, the trial court found that defendant's trial attorney had contacted defendant's mother and sister at his request and for his benefit, did not breach the attorney/client relationship, and had properly investigated defendant's cases and prepared for both trial and a negotiated disposition.

In light of these factual determinations, defendant got what he asked for when his mother and sister wrote him letters giving

him their advice about the offered plea agreement. As in *Huricks*, *supra*, 32 Cal.App.4th 1201, we conclude that defendant's claim "his family pressured him into the plea is not enough to constitute duress. Nothing in the record indicates he was under any more or less pressure than every other defendant faced with serious felony charges and the offer of a plea bargain." (*Id.* at p. 1208.)

Defendant's assertion that "his free will and judgment were overborne by the pressure put on him by . . . his defense counsel" also must be rejected. Defendant actively participated in the plea negotiations initiated by the prosecutor, even suggesting a counteroffer. His trial attorney made no effort to force defendant to accept the offer. She told him that it was ultimately his sole decision whether to take the offer. The fact that defendant may have accepted the plea agreement reluctantly does not establish coercion or duress. "Lawyers . . . often persuade clients to act upon advice which is unwillingly or reluctantly accepted. And the fact that such advice is unwillingly or reluctantly acted upon is not a ' . . . factor overreaching defendant's free and clear judgment' of what should be done to find a means to alleviate the situation with respect to which the client seeks advice." (*People v. Urfer*, *supra*, 94 Cal.App.3d at p. 892.)

The trial court did not abuse its discretion in denying defendant's motion to withdraw his plea.

#### DISPOSITION

The judgment is affirmed.



SCOTLAND, P.J.

We concur:

BLEASE, J.

DAVIS, J.